

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

EARL R. CHARBONNEAU,

Plaintiff,

CIVIL ACTION NO. 07-CV-14220-DT

vs.

DISTRICT JUDGE DENISE PAGE HOOD

MARY JANE M. ELLIOTT PC,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendant.

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OPINION AND ORDER
GRANTING PLAINTIFF'S MOTION TO AMEND COMPLAINT

This matter comes before the Court on Plaintiff's Motion to Amend/Correct Complaint filed on January 15, 2008. (Docket no. 7). Defendant has filed a Response. (Docket nos. 11, 12). Plaintiff has filed a Reply brief. (Docket no. 14). This motion has been referred to the undersigned for decision. (Docket no. 8). The Court dispenses with oral argument on this motion. E.D. Mich. LR 7.1(e). This motion is now ready for ruling.

Plaintiff wishes to amend his Complaint in this matter to add Asset Acceptance, LLC, as a party under Fed. R. Civ. P. 15(a). (Docket no. 7). Rule 15(a) provides that a party may amend its pleading once as a matter of course prior to service of a responsive pleading or within twenty days of serving its pleading if no responsive pleading is required. "Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." Fed. R. Civ. P. 15(a). The decision whether to permit amendment is committed to the discretion of the trial court. *Lucas v. Schneider Nat'l Carriers, Inc.*, 953 F.2d 644 (6th Cir. 1992) (unpublished).

The Complaint in this action alleges violations of the Fair Debt Collection Practices Act. Plaintiff alleges that Asset Acceptance, LLC, sued him in a previous lawsuit in state court for an unpaid debt. He also contends that because he has not made a payment on the account in the statutory period, the debt has expired under the statute of limitations. He therefore contends that Defendant is attempting to collect a debt not permitted by law in violation of the Debt Collection Act. Leave of court is required before Plaintiff may amend his Complaint because Defendant has filed an Answer. Fed. R. Civ. P. 15(a).

Defendant argues that adding another party is futile because Plaintiff made a payment on the account during the relevant period and, because of this payment, the debt has not expired. This futility argument therefore rests on a disputed issue of fact—whether Plaintiff made the payment. Motions to amend should not be denied as futile when there are underlying, disputed issues of material fact because the court must accept the movant’s allegations as true. *See Thiokol Corp. v. Department of Treasury, State of Mich. Revenue Div.*, 987 F.2d 376, 382-83 (6th Cir. 1993) (test for determining whether proposed amendment is futile is same as for Rule 12(b)(6) motion to dismiss). Therefore, futility is not a reason to deny Plaintiff’s motion to amend.

Defendant also argues that the proposed amendment is dilatory and prejudicial. Defendant’s arguments of prejudice are general in nature. There is no specific and significant showing of prejudice. Under such circumstances, leave to amend should be granted. *See Moore v. City of Paducah*, 790 F.2d 557, 562 (6th Cir. 1986). In addition, this case has been pending only since October 2007, and over a month remains before the discovery deadline expires. This motion has not been unduly delayed. The arguments Defendant makes regarding additional burdens on discovery may be resolved by separate orders or perhaps by agreement among the parties. The amendment should be allowed because justice so requires.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Amend/Correct Complaint (docket no. 7) is **GRANTED**. Plaintiff shall file his Amended Complaint on or before February 8, 2008.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: February 05, 2008

s/ Mona K. Majzoub

MONA K. MAJZOUB

UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Counsel of Record on this date.

Dated: February 05, 2008

s/ Lisa C. Bartlett

Courtroom Deputy